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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,904	09/30/2003	Cecil Kost	MMSI121562	8999
26389	7590	08/16/2006	EXAMINER	
CHRISTENSEN, O'CONNOR, JOHNSON, KINDNESS, PLLC			LAstra, DANIEL	
1420 FIFTH AVENUE			ART UNIT	
SUITE 2800			PAPER NUMBER	
SEATTLE, WA 98101-2347			3622	

DATE MAILED: 08/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

 **Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/674,904

Applicant(s)

KOST ET AL.

Examiner

DANIEL LASTRA

Art Unit

3622

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 24 July 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

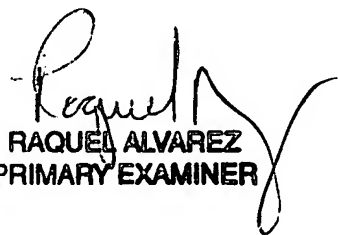
**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

The Applicant argues that Exhibit A of the previously filed affidavit shows that the architecture uses an "IIS Web server", hence signifying conclusively of applicant's use of the Web for pharmaceutical sample disbursements. The Applicant further argues that the previously filed affidavit shows the use of the Web for a physician to order drug samples and according to the Applicant, if a prescriber can do this, there is no need to use a sales representative. The Examiner answers that the limitation "without the use of sales representative" does not mean that a prescriber order drug samples online. Said limitation means that a sales representative is not needed at all for obtaining said drug samples and Applicant's affidavit mentions in page 4 of Exhibit A that sales representative authorize the release of additional vouchers. Therefore, in Applicant's affidavit sales representative are needed to authorize the release of samples even if prescriber order them online, and therefore, the Applicant does not show support in his Affidavit for the limitation "without the use of sales representative". Furthermore, Applicant argues that the Examiner in the Final Office action on page 23 indicates that "brand rules" can be based on many factors, including speciality of the prescriber and the Applicant point out to page 20 of Exhibit B that the speciality of physician is specified and hence, applicant believes that the Affidavit shows possession of the limitation "brand rule". The Examiner answers that Applicant's claim recites "brand rules for guiding a distribution of drug samples of a drug to cause one prescriber's drug sample availability and characteristics to be different from those of another prescriber". Nowhere, in Applicant's affidavit is described this limitation of targeting drug samples by prescribers. Applicant's affidavit mentions only the speciality of a physician and nothing else. MPEP 715.02 [R-2] How Much of the Claimed Invention Must Be Shown, Including the General Rule as to Generic Claims mentions "The 37 CFR 1.131 affidavit or declaration must establish possession of either the whole invention claimed or something falling within the claim (such as a species of a claimed genus), in the sense that the claim as a whole reads on it. In re Tanczyn, 347 F.2d 830, 146 USPQ 298 (CCPA 1965) (Where applicant claims an alloy comprising both nitrogen and molybdenum, an affidavit showing applicant made an alloy comprising nitrogen but not molybdenum is not sufficient under 37 CFR 1.131 to overcome a rejection under 35 U.S.C. 103 based on the combined teachings of one reference disclosing an alloy comprising nitrogen but not molybdenum and a second reference disclosing an alloy comprising molybdenum but not nitrogen). Also, the "Brand rule" limitation is not a obvious limitation that can be obtained from Applicant's affidavit, therefore, even if the Applicant could show to the Examiner support for the limitation "without the use of sales representative", the Applicant does not have support for the whole invention and the affidavit is improper. The Applicant further argues that the ordering embodiments of applicant's invention need not invade the medical offices of prescribers by placing a front office server there to monitor the activities of prescribers. The Examiner answers that Applicant's claims does not mention anything about invading the medical office of prescribers with a server, however, Applicant's claims do not exclude said limitation. Therefore, a system which has a server in a medical office would read Applicant's claimed invention. Applicant argues that there is nothing in Feeney paragraph 283 which recites the limitation of a set of brand rules for guiding a distribution of drug samples of a drug to cause one prescriber's drug sample availability and characteristics to be different from those of another prescriber. The Examiner answers that Feeney teaches in paragraph 285 that "central server maintains a database of all market drug products for appropriate retailers or service providers. From their own list of products, each retailer and service provider chooses the products or services to be promoted". Therefore, Feeney teaches the limitation that "one prescriber's drug sample availability to be different from another prescriber".

  
RAQUEL ALVAREZ  
PRIMARY EXAMINER